

NEW SPIRIT MINING CORP.

IBLA 83-809

Decided October 17, 1983

Appeal of a Nevada State Office, Bureau of Land Management, decision, declaring lode mining claim N MC-123740 null and void ab initio.

Affirmed as modified.

1. Mining Claims: Lands Subject to -- Mining Claims: Recordation -- Mining Claims: Withdrawn Land

A mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio and the notice of location submitted for recordation is rejected insofar as it covers withdrawn lands. However, BLM should not reject the notice as it pertains to lands open to location, provided the claim conforms to the rules governing lode claims after being amended to exclude the withdrawn areas.

APPEARANCES: William H. Montgomery, president, New Spirit Mining Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

New Spirit #2 lode mining claim, N MC-123740, was located by William H. Montgomery and Melville Colgrove in the NW 1/4 and SW 1/4 of sec. 25, T. 15 N., R. 19 E., Mount Diablo meridian, Nevada. The notice of location was dated and filed with the Bureau of Land Management (BLM), on October 22, 1979. Annual statements of assessment work list the claim holders in succession as Montgomery and Colgrove, d.b.a. New Spirit Mining Company, and New Spirit Mining Corporation (New Spirit). In a decision dated June 14, 1983, the Nevada State Office, BLM, declared the unpatented mining claim N MC-123740 null and void ab initio, as follows:

This decision applies to your claim(s) which lie in the following described lands.

T. 15N R. 19E MD Mer.  
Sec. 25, SE1/4NE1/4,W1/2NE1/4,NW1/4

These lands were segregated on December 18, 1970, by notice published in the Federal Register from mineral location and entry under the general mining laws by virtue of the authority and

direction contained in Section 4 of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986). 1/

New Spirit appeals this decision.

[1] It is well established that a mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio. Hanson Properties, Inc., 74 IBLA 364 (1983), and cases cited therein.

New Spirit does not dispute the authority to reject notices for claims on withdrawn land, but, rather, argues that while a portion of N MC-123740 is void, the claim is still viable for lands open to entry and location under the mining laws. It requests that the notice be accepted as it pertains to such portion of the claim not located on withdrawn lands.

In Samuel A. Chesebrough, 49 IBLA 249 (1980), we held that BLM should not reject a notice insofar as it concerns unpatented lands, providing that the claims can conform to the rules governing lode claims after being amended to exclude the patented areas. We have also held that a mining claim is void only to the extent it covers withdrawn or patented land. See, e.g., Philip A. Cramer, 74 IBLA 1 (1983); Kelly R. Healy, 60 IBLA 115 (1981); Harl Rightmire, 53 IBLA 125 (1981). We see no reasons why New Spirit should not be allowed to claim any of the open, nonsegregated lands in this section if the location can be conformed to the applicable rules and regulations. 2/

Although appellant suggests that the BLM decision rejected the notice in whole, such conclusion cannot be clearly derived from the decision itself. BLM properly rejected the notice of location as it pertains to withdrawn lands. However, the decision is ambiguous as it does not address the disposition of the notice as it concerns land not in the withdrawal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

1/ The withdrawal, 35 FR 19199 (Dec. 18, 1970), was officially noted on the BLM land status plats when the claim was located.

2/ The actual boundary of New Spirit #2 is not clearly shown in relation to the official survey map. According to the records, it extends in a northeasterly direction from N MC-123739, New Spirit #1 lode mining claim, which straddles the boundary between sec. 25 and sec. 26. One illustration shows the claim as distributed almost equally on withdrawn and open lands, while another represents that about one-sixth of the location is on withdrawn lands.

